

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR. JUSTICE HARISANKAR V. MENON

Wednesday, the 19th day of June 2024 / 29th Jyaishta, 1946

COML.A NO. 6 OF 2024

CS 29/2023 OF PRINCIPAL SUB COURT/COMMERCIAL COURT, PALAKKAD

APPELLANT(S)/PLAINTIFF:

**Y.SLEEBACHEN, AGED 61 YEARS, S/O.YOHANNAN, CHARUVILA VEEDU,
CHENGAMANADU P.O., KOTTARAKKARA, KOLLAM, PIN - 691557**

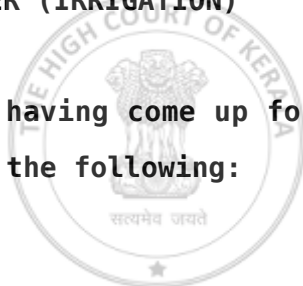
BY ADVS. M/S.C.S.MANILAL, S.NIDHEESH

RESPONDENTS/DEFENDANTS:

- 1. STATE OF KERALA REPRESENTED BY SECRETARY TO GOVERNMENT, IRRIGATION DEPARTMENT, GOVERNMENT OF KERALA, SECRETARIATE, THIRUVANANTHAPURAM, PIN - 605911**
- 2. THE SUPERINTENDING ENGINEER, SIRUVANI PROJECT CIRCLE, PALAKKAD DISTRICT, PIN - 678554**

BY SPECIAL GOVERNMENT PLEADER (IRRIGATION)

This Commercial Appeal having come up for orders on 19.06.2024, the court on the same day passed the following:



“CR”

ANIL K. NARENDRAN & HARISANKAR V. MENON, JJ.

Coml. Appeal Nos.6, 7, 8 and 9 of 2024

Dated this the 19th day of June, 2024

ORDER

Anil K. Narendran, J.

These Commercial Appeals are filed by the plaintiff in Commercial Suit Nos.27 to 30 of 2023 on the file of the Commercial Court (Principal Sub Court), Palakkad, invoking the provisions under sub-section (1A) of Section 13 of the Commercial Courts Act, 2015, read with its proviso. The suits against the respondents herein-defendants, for recovery of money, declaration and perpetual prohibitory injunction, were originally filed before the Principal Sub Court, Palakkad, which were numbered as O.S.Nos.738, 752, 753 and 778 of 2010. By the order in I.A.No.484 of 2013 joint trial was ordered, treating O.S.No.738 of 2010 as the leading case. Thereafter, by the order in I.A.No.1230 of 2023, those suits were converted as Commercial Suits and numbered as C.S.Nos.27 to 30 of 2023.

2. By a common judgment dated 25.08.2023 of the Commercial Court, C.S.Nos.27 of 2023 and 30 of 2023 were decreed and C.S.No.29 of 2023 and 28 of 2023 were decreed in

part. The operative portion of the common judgment dated 25.08.2023 reads thus;

“In the result:-

1) C.S. No.27 of 2023 is decreed.

a) The 1st defendant shall pay an amount of Rs.24,70,654/- with interest at the rate of 6% per annum from the date of suit till realisation to the plaintiff.

b) It is declared that letter No.A3-843/01 dated 18.03.2008 issued by the 3rd defendant is arbitrary, unilateral, unreasonable, improper and unjust.

c) The defendants are prohibited from realising or taking any steps for realisation or enforcing recovery of any sum from the plaintiff on the basis of or in continuation of letter No.A3-843/01 dated 18.03.2008.

d) Parties shall suffer their respective costs.

2) C.S.No.30 of 2023 is decreed.

a) The 1st defendant shall pay an amount of Rs.49,56,812/- with interest at the rate of 6% per annum from the date of suit till realisation to the plaintiff.

b) It is declared that letter No.A3-843/01 dated 18.03.2008 issued by the 3rd defendant is arbitrary, unilateral, unreasonable, improper and unjust.

c) The defendants are prohibited from realising or taking any steps for realisation or enforcing recovery of any sum from the plaintiff on the basis of or in continuation of letter No.A3-843/01 dated 18.03.2008.

d) The 1st defendant shall repay an amount of Rs.18,19,454/- which has been illegally recovered from the plaintiff on the basis of letter No.A3-843/01 dated 18.03.2008.

d) Parties shall suffer their respective costs.

3) C.S No. 29 of 2023 is decreed in part:

a) The 1st defendant shall pay an amount of Rs.34,61,828/- with interest at the rate of 6% per annum from the date of suit till realisation to the plaintiff.

b) It is declared that G.O.(Rt)No.405/2009/WRD dated 07.04.2009 issued by the 3rd defendant is arbitrary, unilateral, improper and unjust. Unreasonable.

c) Parties shall suffer their respective costs.

4) C.S No. 28 of 2023 is decreed in part.

a) The 1st defendant shall pay an amount of Rs.29,64,033/- with interest at the rate of 6% per annum from the date of suit till realisation to the plaintiff.

b) It is declared that G.O.(Rt.)No.405/2009/WRD dated 07.04.2009 issued by the 1st defendant is arbitrary, unilateral, unreasonable, improper and unjust.

c) Parties shall suffer their respective costs."

3. The judgment and decree in C.S.Nos.29 of 2023 and 28 of 2023 are under challenge in Coml.App.Nos.6 of 2024 and 7 of 2024, to the extent of granting interest only at the rate of 6% per annum for the decreed amount, instead of 12% per annum, and the direction to the parties to suffer their respective costs. The judgment and decree in C.S.Nos.30 of 2023 and 27 of 2023 are under challenge in Coml.App.Nos.8 of 2024 and 9 of 2024 to the above extent and also to the extent certain reliefs are declined.

4. There was a delay of 45 days in re-presenting the memorandum of Commercial Appeals after curing the defects

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noted by the Registry. That delay was condoned by the order dated 05.03.2024 in C.M.Application No.1 of 2024 in the respective appeals. Thereafter, the filing delay of 13 days was condoned by the order dated 12.03.2024 in C.M.Application No.2 of 2024 in the respective appeals.

5. The learned Special Government Pleader (Irrigation) raised the question of maintainability of the Commercial Appeals before this Court, under Section 13(1A) of the Commercial Courts Act, against the judgment and decree of the Commercial Court (Principal Sub Court), Palakkad, in the Commercial Suits filed by the appellant-plaintiff.

6. Heard the arguments of the learned counsel for the appellant-plaintiff and the learned Special Government Pleader (Irrigation) for the respondents-defendants.

7. The Special Government Pleader (Irrigation) for the respondents-defendants contended that a challenge against the judgment and decree dated 25.08.2023 of the Commercial Court (Principal Sub Court), Palakkad in C.S.Nos.27 to 30 of 2023, can only be made in Commercial Appeals filed under sub-section (1) of Section 13 of the Commercial Courts Act, before the Commercial Appellate Court designated under Section 3A of the said Act, i.e., before the Principal District Court, Palakkad.

8. On the other hand, the learned counsel for the appellant-plaintiff contended that a challenge against the aforesaid judgment and decree of the Commercial Court (Principal Sub Court), Palakkad, has to be made in Commercial Appeals filed under sub-section (1A) of Section 13 of the Commercial Courts Act, read with its proviso, before the Commercial Appellate Division of the High Court, and not before the Commercial Appellate Court designated under Section 3A of the Act, i.e., the Principal District Court, Palakkad. The learned counsel addressed arguments with reference to the phraseology 'Commercial Courts at District level' used in sub-section (1) of Section 3 and 'Commercial Courts at District Judge level' used in the first proviso to sub-section (1) of Section 3, inserted by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018. The learned counsel has referred to the categories mentioned in clause (a) of Article 236 of the Constitution of India, which defines the expression 'District Judge', since as per clause (e) of Section 2 of the Commercial Courts Act, the expression 'District Judge' shall have the same meaning assigned to it in clause (a) of Article 236. The learned counsel has also addressed arguments with reference to the Kerala Civil Courts (Amendment) Act, 2013, whereby the

pecuniary jurisdiction of the District Court was enhanced from 'two lakh rupees' to 'twenty lakh rupees'.

9. The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (Act 4 of 2016) was enacted by the Parliament to provide for the constitution of Commercial Courts, Commercial Division and Commercial Appellate Division in the High Courts for adjudicating commercial disputes of specified value and matters connected therewith or incidental thereto. The Statement of Objects and Reasons of Act 4 of 2016 states that the proposal to provide for speedy disposal of high-value commercial disputes has been under consideration by the Government for quite some time. The high-value commercial disputes involve complex facts and questions of law. Therefore, there is a need to provide an independent mechanism for their early resolution. Early resolution of commercial disputes shall create a positive image to the investor world about the independent and responsive Indian legal system.

10. By the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018 (Act 28 of 2018), in the long title of Act 4 of 2016 (the Principal Act) after the words 'Commercial Courts', the words 'Commercial Appellate Courts', were inserted. The long title of the

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Principal Act, after its amendment by Act 28 of 2018 (the Amendment Act), reads thus;

"An Act to provide for the constitution of Commercial Courts, Commercial Appellate Courts, Commercial Division and Commercial Appellate Division in the High Courts for adjudicating commercial disputes of specified value and matters connected therewith or incidental thereto."

(underline supplied)

11. By the Amendment Act, in Section 1 of the Principal Act, sub-section (1) was substituted. Sub-section (1) of Section 1 of the Principal Act, after its amendment by the Amendment Act, reads thus;

"(1) This Act may be called the Commercial Courts Act, 2015."

12. Section 2 of the Principal Act, prior to its amendment by the Amendment Act, reads thus;

"2. Definitions.-

(1) In this Act, unless the context otherwise requires.-

(a) 'Commercial Appellate Division' means the Commercial Appellate Division in a High Court constituted under sub-section (1) of Section 5.

(b) 'Commercial Court' means the Commercial Court constituted under sub-section (1) of Section 3.

(c) 'commercial dispute' means a dispute arising out of -

(i) ordinary transactions of merchants, bankers, financiers and traders such as those relating to mercantile documents, including enforcement and interpretation of such documents;

- (ii) export or import of merchandise or services;
- (iii) issues relating to admiralty and maritime law;
- (iv) transactions relating to aircraft, aircraft engines, aircraft equipment and helicopters, including sales, leasing and financing of the same;
- (v) carriage of goods;
- (vi) construction and infrastructure contracts, including tenders;
- (vii) agreements relating to immovable property used exclusively in trade or commerce;
- (viii) franchising agreements;
- (ix) distribution and licensing agreements;
- (x) management and consultancy agreements;
- (xi) joint venture agreements;
- (xii) shareholders agreements;
- (xiii) subscription and investment agreements pertaining to the services industry including outsourcing services and financial services;
- (xiv) mercantile agency and mercantile usage;
- (xv) partnership agreements;
- (xvi) technology development agreements;
- (xvii) intellectual property rights relating to registered and unregistered trademarks, copyright, patent, design, domain names, geographical indications and semiconductor integrated circuits;
- (xviii) agreements for sale of goods or provision of services;
- (xix) exploitation of oil and gas reserves or other natural resources including electromagnetic spectrum;
- (xx) insurance and re-insurance;
- (xxi) contracts of agency relating to any of the above; and

(xxii) such other commercial disputes as may be notified by the Central Government.

Explanation.- A commercial dispute shall not cease to be a commercial dispute merely because -

(a) it also involves action for recovery of immovable property or for realisation of monies out of immovable property given as security or involves any other relief pertaining to immovable property;

(b) one of the contracting parties is the State or any of its agencies or instrumentalities, or a private body carrying out public functions;

(d) 'Commercial Division' means the Commercial Division in a High Court constituted under sub-section (1) of Section 4.

(e) 'District Judge' shall have the same meaning as assigned to it in clause (a) of Article 236 of the Constitution of India.

(f) 'document' means any matter expressed or described upon any substance by means of letters, figures or marks, or electronic means, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter;

(g) 'notification' means a notification published in the Official Gazette and the expression 'notify' with its cognate meanings and grammatical variations shall be construed accordingly;

(h) 'Schedule' means the Schedule appended to the Act; and

(i) 'Specified Value', in relation to a commercial dispute, shall mean the value of the subject-matter in respect of a suit as determined in accordance with Section 12 which shall not be less than one crore rupees or such higher value, as may be notified by the Central Government.

(2) The words and expressions used and not defined in this Act but defined in the Code of Civil Procedure, 1908 (5 of 1908) and the Indian Evidence Act, 1872 (1 of 1872), shall have the same meanings respectively assigned to them in that Code and the Act.” (underline supplied)

13. By the Amendment Act, in Section 2 of the Principal Act, clause (a) was renumbered as clause (aa) thereof, and before clause (aa) as so renumbered, the following clause was inserted;

“(a) ‘Commercial Appellate Courts’ means the Commercial Appellate Courts designated under Section 3A;”

(underline supplied)

In clause (i) of Section 2, for the words ‘which shall not be less than one crore rupees’, the words ‘which shall not be less than three lakh rupees’ were substituted.

14. In the Principal Act, in Chapter II, the Chapter heading ‘Constitution of Commercial Courts, Commercial Divisions and Commercial Appellate Divisions’ was substituted as ‘Commercial Courts, Commercial Appellate Courts, Commercial Divisions and Commercial Appellate Divisions’, by the Amendment Act.

15. Section 3 of the Principal Act deals with the constitution of Commercial Courts. Section 3, prior to its amendment by the Amendment Act, reads thus;

“3. Constitution of Commercial Courts.- (1) The State Government may, after consultation with the concerned High Court, by notification, constitute such number of

Commercial Courts at District level, as it may deem necessary for the purpose of exercising the jurisdiction and powers conferred on those Courts under this Act:

Provided that no Commercial Court shall be constituted for the territory over which the High Court has ordinary original civil jurisdiction.

(2) The State Government shall, after consultation, with the concerned High Court specify, by notification, the local limits of the area to which the jurisdiction of a Commercial Court shall extend and may, from time to time, increase, reduce or alter such limits.

(3) The State Government shall, with the concurrence of the Chief Justice of the High Court, appoint one or more persons having experience in dealing with commercial disputes to be the Judge or Judges of a Commercial Court, from amongst the cadre of Higher Judicial Service in the State.

(underline supplied)

16. As per the proviso to sub-section (1) of Section 3 of the Principal Act, no Commercial Court shall be constituted for the territory over which the High Court has ordinary original civil jurisdiction. By the Amendment Act, in Section 3 of the Principal Act, in sub-section (1), the said proviso, was substituted with the following provisos;

“Provided that with respect to the High Courts having ordinary original civil jurisdiction, the State Government may, after consultation with the concerned High Court, by notification, constitute Commercial Courts at the District Judge level:

Provided further that with respect to a territory over which the High Courts have ordinary original civil jurisdiction, the State Government may, by notification, specify such pecuniary value which shall not be less than three lakh rupees and not more than the pecuniary jurisdiction exercisable by the District Courts, as it may consider necessary.” (underline supplied)

17. By the Amendment Act, in Section 3 of the Principal Act, after sub-section (1), the following sub-section was inserted;

“(1A) Notwithstanding anything contained in this Act, the State Government may, after consultation with the concerned High Court, by notification, specify such pecuniary value which shall not be less than three lakh rupees or such higher value, for whole or part of the State, as it may consider necessary.” (underline supplied)

18. By the Amendment Act, in Section 3 of the Principal Act, in sub-section (3), for the words ‘State Government shall’, the words ‘State Government may’ were substituted; and for the words ‘Commercial Court, from amongst the cadre of Higher Judicial Service in the State’, the words ‘Commercial Court either at the level of District Judge or a court below the level of a District Judge’ were substituted.

19. Section 3 of the Principal Act, after its amendment by the Amendment Act, reads thus;

“3. Constitution of Commercial Courts.- (1) The State Government may, after consultation with the concerned

High Court, by notification, constitute such number of Commercial Courts at District level, as it may deem necessary for the purpose of exercising the jurisdiction and powers conferred on those Courts under this Act:

Provided that with respect to the High Courts having ordinary original civil jurisdiction, the State Government may, after consultation with the concerned High Court, by notification, constitute Commercial Courts at the District Judge level:

Provided further that with respect to a territory over which the High Courts have ordinary original civil jurisdiction, the State Government may, by notification, specify such pecuniary value which shall not be less than three lakh rupees and not more than the pecuniary jurisdiction exercisable by the District Courts, as it may consider necessary.

(1A) Notwithstanding anything contained in this Act, the State Government may, after consultation with the concerned High Court, by notification, specify such pecuniary value which shall not be less than three lakh rupees or such higher value, for whole or part of the State, as it may consider necessary.

2) The State Government shall, after consultation with the concerned High Court specify, by notification, the local limits of the area to which the jurisdiction of a Commercial Court shall extend and may, from time to time, increase, reduce or alter such limits.

(3) The State Government may, with the concurrence of the Chief Justice of the High Court appoint one or more persons having experience in dealing with commercial disputes to be the Judge or Judges, of a Commercial Court either at the

level of District Judge or a court below the level of a District Judge. (underline supplied)

20. By the Amendment Act, after Section 3 of the Principal Act, Section 3A was inserted, which deals with the designation of Commercial Appellate Courts. Section 3A reads thus;

"3A. Designation of Commercial Appellate Courts.- Except the territories over which the High Courts have ordinary original civil jurisdiction, the State Government may, after consultation with the concerned High Court, by notification, designate such number of Commercial Appellate Courts at District Judge level, as it may deem necessary, for the purposes of exercising the jurisdiction and powers conferred on those Courts under this Act." (underline supplied)

21. By the Amendment Act, in Section 4 of the Principal Act, in sub-section (1), the words 'ordinary civil jurisdiction', were substituted by the words 'ordinary original civil jurisdiction'. Section 4 of the Principal Act, after its amendment by the Amendment Act, reads thus;

"4. Constitution of Commercial Division of High Court.-

(1) In all High Courts having ordinary original civil jurisdiction, the Chief Justice of the High Court may, by order, constitute Commercial Division having one or more Benches consisting of a Single Judge for the purpose of exercising the jurisdiction and powers conferred on it under this Act.

(2) The Chief Justice of the High Court shall nominate such Judges of the High Court who have experience in dealing

with commercial disputes to be Judges of the Commercial Division.” (underline supplied)

22. Section 5 of the Principal Act, which deals with the constitution of Commercial Appellate Division, reads thus;

“5. Constitution of Commercial Appellate Division.-

(1) After issuing notification under sub-section (1) of Section 3 or order under sub-section (1) of Section 4, the Chief Justice of the concerned High Court shall, by order, constitute Commercial Appellate Division having one or more Division Benches for the purpose of exercising the jurisdiction and powers conferred on it by the Act.

(2) The Chief Justice of the High Court shall nominate such Judges of the High Court who have experience in dealing with commercial disputes to be Judges of the Commercial Appellate Division.” (underline supplied)

23. Section 6 of the Principal Act, which deals with the jurisdiction of Commercial Court, reads thus;

“6. Jurisdiction of Commercial Court.- The Commercial Court shall have jurisdiction to try all suits and applications relating to a commercial dispute of a specified value arising out of the entire territory of the State over which it has been vested territorial jurisdiction.

Explanation.- For the purposes of this section, a commercial dispute shall be considered to arise out of the entire territory of the State over which a Commercial Court has been vested jurisdiction, if the suit or application relating to such commercial dispute has been instituted as per the provisions of Sections 16 to 20 of the Code of Civil Procedure, 1908 (5 of 1908).” (underline supplied)

24. Section 7 of the Principal Act, which deals with the jurisdiction of Commercial Divisions of the High Court, reads thus;

“7. Jurisdiction of Commercial Divisions of the High Court.- All suits and applications relating to commercial disputes of a specified value filed in a High Court having ordinary original civil jurisdiction shall be heard and disposed of by the Commercial Division of that High Court:

Provided that all suits and applications relating to commercial disputes, stipulated by an Act to lie in a court not inferior to a District Court, and filed or pending on the original side of the High Court, shall be heard and disposed of by the Commercial Division of the High Court:

Provided further that all suits and applications transferred to the High Court by virtue of sub-section (4) of Section 22 of the Designs Act, 2000 (16 of 2000) or Section 104 of the Patents Act, 1970 (39 of 1970) shall be heard and disposed of by the Commercial Division of the High Court in all the areas over which the High Court exercises ordinary original civil jurisdiction.”

(underline supplied)

25. Section 8 of the Principal Act, which deals with bar against revision application or petition against interlocutory order, reads thus;

“8. Bar against revision application or petition against interlocutory order.- Notwithstanding anything contained in any other law for the time being in force, no civil revision application or petition shall be entertained against any interlocutory order of a Commercial Court, including an order on the issue of jurisdiction, and any such challenge,

subject to the provisions of Section 13, shall be raised only in an appeal against the decree of the Commercial Court.”

(underline supplied)

26. Section 11 of the Principal Act, which deals with bar of jurisdiction of Commercial Courts and Commercial Divisions, reads thus;

“11. Bar of jurisdiction of Commercial Courts and Commercial Divisions.- Notwithstanding anything contained in this Act, a Commercial Court or a Commercial Division shall not entertain or decide any suit, application or proceedings relating to any commercial dispute in respect of which the jurisdiction of the civil court is either expressly or impliedly barred under any other law for the time being in force.”

(underline supplied)

27. Section 13 of the Principal Act deals with appeals from decrees of Commercial Courts and Commercial Divisions. Section 13, prior to its amendment by the Amendment Act, reads thus;

“13. Appeals from decrees of Commercial Courts and Commercial Divisions.- (1) Any person aggrieved by the decision of the Commercial Court or Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of judgment or order, as the case may be.

Provided that an appeal shall lie from such orders passed by a Commercial Division or Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act

and Section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).

(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.” (underline supplied)

28. By the Amendment Act, in Section 13 of the Principal Act, sub-section (1) was substituted as follows;

“(1) Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order.

(1A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and Section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).” (underline supplied)

29. As per Section 14 of the Principal Act, which deals with expeditious disposal of appeals, the Commercial Appellate Division shall endeavour to dispose of appeals filed before it within a period of six months from the date of filing of such appeal. By the

Amendment Act, the words 'Commercial Appellate Division' were substituted by the words 'Commercial Appellate Courts and the Commercial Appellate Division'. Section 14, after its amendment by the Amendment Act, reads thus;

"14. Expeditious disposal of appeals.- The Commercial Appellate Courts and Commercial Appellate Division shall endeavour to dispose of appeals filed before it within a period of six months from the date of filing of such appeal."

(underline supplied)

30. Section 16 of the Principal Act deals with amendments to the Code of Civil Procedure Code, 1908 in its application to commercial disputes. Section 16 reads thus;

"16. Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes.- (1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, in their application to any suit in respect of a commercial dispute of a Specified Value, stand amended in the manner as specified in the Schedule.

(2) The Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, in the trial of a suit in respect of a commercial dispute of a specified value.

(3) Where any provision of any Rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908 (5 of 1908), by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, the provisions of

the Code of Civil Procedure as amended by this Act shall prevail.” (underline supplied)

31. Section 21 of the Principal Act deals with its overriding effect. Section 21 reads thus;

“21. Act to have overriding effect.- Save as otherwise provided, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law for the time being in force other than this Act.” (underline supplied)

32. As already noticed hereinbefore, the enactment of the Commercial Courts Act by the Parliament is to provide for an independent mechanism for speedy disposal of commercial disputes having the 'specified value'.

33. In **Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP [(2020) 15 SCC 585]** the Apex Court noticed that the object and purpose of the Commercial Courts Act is to provide for the constitution of Commercial Courts, Commercial Appellate Courts, Commercial Division and Commercial Appellate Division of the High Courts and also to ensure that commercial cases are disposed of expeditiously, fairly and at a reasonable cost to the litigant. Section 13 of the Act deals with appeals from decrees of Commercial Courts and Commercial Divisions. As per Section 14 of the Act, the Commercial Appellate Court and the

Commercial Appellate Division shall endeavour to dispose of appeals filed before it within a period of six months from the date of filing of such appeal. After referring to various amendments made to the provisions of the Code of Civil Procedure, 1908, as per the Schedule to the Commercial Courts Act, thereby making significant departure from the Code, the Apex Court observed that various provisions under the Act, namely, Case Management Hearing and other provisions make the court to adopt a pro-active approach in resolving commercial disputes, in order to ensure speedy resolution of commercial disputes in a time bound manner. The intent of the Legislature seems to be to have a procedure which expedites the disposal of commercial disputes and thus creates a positive environment for investment and development and makes India an attractive place to do business.

34. In **Ambalal Sarabhai Enterprises Ltd. [(2020) 15 SCC 585]**, after referring to the Statement of Objects and Reasons of the Commercial Courts Act and various amendments made to the Code of Civil Procedure and insertion of new rules to the Code applicable to suits relating to commercial disputes, the Apex Court found that the enactment of Commercial Courts Act is for the purpose of providing an early disposal of high-value commercial disputes. A purposive interpretation of the Statement

of Objects and Reasons and various amendments to the Code of Civil Procedure leaves no room for doubt that the provisions of the Commercial Courts Act require to be strictly construed. If the provisions are given a liberal interpretation, the object behind the constitution of the Commercial Division of courts, viz., putting the matter on a fast track and speedy resolution of commercial disputes, will be defeated. In the Statement of Objects and Reasons, words such as 'early' and 'speedy' have been incorporated and reiterated. The object shall be fulfilled only if the provisions of the Commercial Courts Act are interpreted in a narrow sense and not hampered by the usual procedural delays plaguing our traditional legal system.

35. Commercial Courts - below the level of a District Judge and at the District Judge level - and Commercial Division of High Court: - A reading of the provisions under the Principal Act and the Amendment Act, referred to hereinbefore, would show that sub-section (1) of Section 3 of the Principal Act read with its proviso and clause (i) of sub-section (1) of Section 2 empowered the State Government, after consultation with the concerned High Court, to constitute Commercial Courts at District level, except the territories over which the High Courts have ordinary original civil jurisdiction, to adjudicate commercial disputes of a specified

value, which shall not be less than one crore rupees; and sub-section (1) of Section 4 empowered the Chief Justice to constitute Commercial Division of High Court having one or more Benches consisting of a Single Judge in all High Courts having ordinary civil jurisdiction. After the amendment of sub-section (1) of Section 3 and clause (i) of sub-section (1) of Section 2 by the Amendment Act, sub-section (1) of Section 3 read with clause (i) of sub-section (1) of Section 2 empowers the State Government, after consultation with the concerned High Court, to constitute Commercial Courts at District level, in the territories over which the High Courts have no ordinary original civil jurisdiction, to adjudicate commercial disputes of a specified value, which shall not be less than three lakh rupees. After the said amendment, the first proviso to sub-section (1) of Section 3 empowers the State Government, in consultation with the concerned High Court, to constitute Commercial Courts at the District Judge level, with respect to the High Courts having ordinary original civil jurisdiction; and the second proviso to sub-section (1) of Section 3 empowers the State Government, with respect to a territory over which the High Courts have ordinary original civil jurisdiction to specify such pecuniary value, which shall not be less than three lakh rupees and not more than the pecuniary jurisdiction

exercisable by the District Courts, for such Commercial Courts at the District Judge level. Sub-section (1A) of Section 3, inserted by the Amendment Act, which starts with a non-obstante clause, empowers the State Government, after consultation with the concerned High Court, by notification, specify such pecuniary value which shall not be less than three lakh rupees or such higher value, for whole or part of the State, as it may consider necessary. Sub-section (1) of Section 4 empowers the Chief Justice to constitute Commercial Divisions of the High Courts in all High Courts having ordinary original civil jurisdiction.

35.1. Till the amendments made to the Principal Act, by the Amendment Act, in view of the prohibition contained in the proviso to sub-section (1) of Section 3 of the Principal Act, no Commercial Court shall be constituted for the territory over which the High Court has ordinary original civil jurisdiction. In such a territory, the adjudication of commercial disputes of a specified value was by the Commercial Division of that High Court, constituted under sub-section (1) of Section 4 of the Principal Act. After the amendments made to the Principal Act, by the Amendment Act, by substituting the proviso to sub-section (1) of Section 3, by the first and second provisos to sub-section (1) of Section 3, the first proviso to sub-section (1) of Section 3 contemplates the constitution of

Commercial Courts at the District Judge level with respect to the High Courts having ordinary original civil jurisdiction. As per the second proviso to sub-section (1) of Section 3, with respect to a territory over which the High Courts have ordinary original civil jurisdiction, the State Government may, by notification, specify such pecuniary value which shall not be less than three lakh rupees and not more than the pecuniary jurisdiction exercisable by the District Courts.

35.2. By the Amendment Act, in addition to the insertion of the provisos to sub-section (1) of Section 3 and the insertion of sub-section (1A) to Section 3 of the Principal Act, certain amendments have also been made to sub-section (3) of Section 3. By that amendment, in sub-section (3) of Section 3, for the words 'State Government shall', the words 'State Government may' were substituted; and for the words 'Commercial Court, from amongst the cadre of Higher Judicial Service in the State', the words 'Commercial Court either at the level of District Judge or a court below the level of a District Judge' were substituted. Therefore, sub-section (3) of Section 3 of the Principal Act, after its amendment by the Amendment Act, empowers the State Government, with the concurrence of the Chief Justice of the High Court, to appoint one or more persons having experience in

dealing with commercial disputes to be the Judge or Judges of a Commercial Court below the level of a District Judge with respect to a territory over which the High Courts have no ordinary original civil jurisdiction. On the other hand, the first proviso to sub-section (1) of Section 3, substituted by the Amendment Act, empowers the State Government, after consultation with the concerned High Court, by notification, to constitute Commercial Courts at the District Judge level, with respect to the High Courts having ordinary original civil jurisdiction; and the second proviso empowers the State Government, with respect to a territory over which the High Courts have ordinary original civil jurisdiction, by notification, specify such pecuniary value which shall not be less than three lakh rupees and not more than the pecuniary jurisdiction exercisable by the District Courts. Therefore, after the amendments made to sub-section (1) of Section 3 of the Principal Act, by the Amendment Act, with respect to the High Courts having ordinary original civil jurisdiction, Commercial Courts at the District Judge level shall deal with commercial disputes; and with respect to a territory over which the High Courts have ordinary original civil jurisdiction, the State Government shall specify a pecuniary value which shall not less than three lakh rupees and not more than the pecuniary jurisdiction exercisable by the District

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Courts. In such a territory, commercial disputes more than the pecuniary jurisdiction exercisable by the Commercial Courts at the District Judge level shall be dealt with by the Commercial Division of such High Courts constituted under sub-section (1) of Section 4.

36. Commercial Appellate Courts and Commercial Appellate Division of High Court:- The Principal Act, after its amendment by the Amendment Act, provides for the constitution of 'Commercial Appellate Courts', in addition to Commercial Courts and Commercial Division and Commercial Appellate Division in the High Courts. Clause (a) of Section 2 of the Principal Act, inserted by the Amendment Act, after renumbering the existing clause (a) as clause (aa), defines 'Commercial Appellate Courts' to mean the Commercial Appellate Courts designated under Section 3A, inserted in the Principal Act, after Section 3. As per Section 3A, except the territories over which the High Courts have ordinary original civil jurisdiction, the State Government may, after consultation with the concerned High Court, by notification, designate such number of Commercial Appellate Courts at District Judge level, as it may deem necessary, for the purposes of exercising the jurisdiction and powers conferred on those Courts under this Act.

36.1. A reading of the provisions under Section 3A makes it clear that the designation of Commercial Appellate Courts at District Judge level is with respect to the territories over which the High Courts have no ordinary original civil jurisdiction since it provides for the designation of Commercial Appellate Courts, except the territories over which the High Courts have ordinary original civil jurisdiction.

36.2. Section 13 of the Principal Act deals with appeals from decrees of Commercial Courts and Commercial Divisions. As per sub-section (1) of Section 13, as it stood prior to the amendment by the Amendment Act, any person aggrieved by the decision of the Commercial Court or the Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of judgment or order, as the case may be. The proviso to sub-section (1) of Section 13 provides for an appeal from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908, as amended by the Commercial Courts Act and Section 37 of the Arbitration and Conciliation Act.

36.3. The constitution of Commercial Courts below the level of a District Judge in territories over which the High Courts have

no ordinary original civil jurisdiction, necessitated the amendments made to the Principal Act, by the Amendment Act, inserting Section 3A for designation of the Commercial Appellate Courts at District Judge level, and substitution of sub-section (1) of Section 13 of the Principal Act, by sub-sections (1) and (1A). Till such amendment, as per the provisions under sub-section (1) of Section 13 of the Principal Act, any person aggrieved by the decision of a Commercial Court or Commercial Division of High Court may appeal to the Commercial Appellate Division of that High Court, within a period of sixty days from the date of judgment or order, as the case may be.

36.4. After the substitution of sub-section (1) of Section 13 of the Principal Act, by the amendment Act, any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge, with respect to a territory over which the High Courts have no ordinary original civil jurisdiction, may appeal to the Commercial Appellate Court, i.e., the Commercial Appellate Court constituted under Section 3A at the District Judge level, within a period of sixty days from the date of judgment or order, invoking the provisions under sub-section (1) of Section 13, instead of the Commercial Appellate Division of the High Court, as originally provided in sub-section (1) of Section 13 of the Principal

Act. After the said amendment, any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, the Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court, within a period of sixty days from the date of judgment or order, invoking the provisions under sub-section (1A) of Section 13. In view of the proviso, an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908, as amended by the Commercial Courts Act and Section 37 of the Arbitration and Conciliation Act. Section 14 of the Principal Act, after its amendment by the Amendment Act, whereby the words 'Commercial Appellate Division' were substituted by the words 'Commercial Appellate Courts and the Commercial Appellate Division', provides that the Commercial Appellate Courts and Commercial Appellate Division shall endeavour to dispose of appeals filed before it within a period of six months from the date of filing of such appeal.

36.5. In view of the provisions under sub-section (1) and sub-section (1A) of Section 13 of the Principal Act, as substituted by the Amendment Act, any person aggrieved by the judgment or

order of a Commercial Court below the level of a District Judge in territories over which the High Courts have no ordinary original civil jurisdiction may appeal to the Commercial Appellate Court at District Judge level designated under Section 3A, within a period of sixty days from the date of the judgment or order, and any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court in territories referred to in the provisos to sub-section (1) of Section 3 and sub-section (1) of Section 4, as the case may be, may appeal to the Commercial Appellate Division of that High Court, constituted under sub-section (1) of Section 5, within a period of sixty days from the date of the judgment or order. Sub-section (2) of Section 13 of the Principal Act, which starts with a non-obstante clause, provides that, notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of the said Act. Therefore, the judgment or order of a Commercial Court below the level of a District Judge in territories over which the High Courts have no ordinary original civil jurisdiction cannot be challenged before the High Court, invoking

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the provisions under sub-section (1A) of Section 13 of the Commercial Courts Act. Such a judgment or order has to be challenged before the Commercial Appellate Court designated under Section 3A at the District Judge level, by invoking the provisions under sub-section (1) of Section 13 of the said Act.

36.6. The contentions to the contra raised by the learned counsel for the appellant-plaintiff after referring to the phraseology 'Commercial Courts at District level' used in sub-section (1) of Section 3 and 'Commercial Courts at District Judge level' used in the first proviso to sub-section (1) of Section 3, inserted by the Amendment Act, and the categories mentioned in clause (a) of Article 236 of the Constitution of India, which defines the expression 'District Judge', can only be rejected as untenable and we do so.

37. Notifications issued by the State Government constituting Commercial Courts and designation of Commercial Appellate Courts:- In the exercise of the powers conferred by sub-section (1) and sub-section (2) of Section 3 of the Commercial Courts Act, the Government of Kerala, in consultation with the High Court of Kerala, constituted Commercial Courts in all 14 Judicial Districts designating the Principal Sub Courts and Sub Courts mentioned in column (2) of the Schedule, as Commercial

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Courts for the purpose of exercising jurisdiction and powers conferred on that courts under the said Act, by G.O.(Ms.)No.51/2020/Home dated 24.02.2020. By the very same notification, the Government of Kerala, in the exercise of the powers under Section 3A of the Commercial Courts Act, in consultation with the High Court of Kerala, designated the Principal District Courts in each district as Commercial Appellate Courts, with jurisdiction over the respective Judicial Districts, for the purpose of exercising the jurisdiction and powers conferred upon such courts under the said Act.

37.1. The aforesaid notification dated 24.02.2020 was amended by G.O.(Ms.)No.53/2022/Home dated 18.02.2022, whereby all Sub Courts in the State are designated as Commercial Courts. By the very same notification, in the exercise of the powers conferred by sub-section (1A) of Section 3 of the Commercial Courts Act, the Government of Kerala, in consultation with the High Court of Kerala, specified the pecuniary value to be not less than ten lakh rupees for the whole of the State for the purpose of the said Act.

37.2. The Commercial Appellate Courts at District Judge level, designated under Section 3A of the Commercial Courts Act, exercise jurisdiction in the appeals filed under sub-section (1) of

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Section 13 of the Act, against the judgment or order of a Commercial Court below the level of a District Judge, and the Commercial Appellate Division of a High Court constituted under sub-section (1) of Section 5 of the Act, exercises jurisdiction in the appeals filed under sub-section (1A) of Section 13 of the Act, against the appeals from the judgment or order of a Commercial Court at the level of a District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court constituted under sub-section (1) of Section 4 of the Act, in all High Courts having ordinary original civil jurisdiction. The appellate jurisdiction of the Commercial Appellate Courts at District Judge level and that of the Commercial Appellate Division of a High Court is not limited by specifying any pecuniary limits. None of the provisions under the said Act empowers the State Government to specify any pecuniary limits for the exercise of the appellate jurisdiction, either by the Commercial Appellate Court at District Judge level or the Commercial Appellate Division of a High Court.

37.3. As per Section 21 of the Commercial Courts Act, which deals with its overriding effect, save as otherwise provided, the provisions of the said Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the

time being in force or in any instrument having effect by virtue of any law for the time being in force other than the said Act. Therefore, the contention raised by the learned counsel for the appellant-plaintiff relying on the provisions under Section 3 of the Kerala Civil Courts (Amendment) Act, 2013, fixing the pecuniary jurisdiction of District Courts to hear appeals with subject matter valued up to Rs.20,00,000/-, can only be rejected as untenable and we do so.

38. As held hereinbefore at paragraph 36.5, the judgment or order of a Commercial Court below the level of a District Judge in territories over which the High Courts have no ordinary original civil jurisdiction cannot be challenged before the High Court, invoking the provisions under sub-section (1A) of Section 13 of the Commercial Courts Act. Such a judgment or order has to be challenged before the Commercial Appellate Court designated under Section 3A at the District Judge level, by invoking the provisions under sub-section (1) of Section 13 of the said Act.

39. Therefore, in order to challenge the judgment and decree dated 24.08.2023 of the Commercial Court (Principal Sub Court), Palakkad in C.S.Nos.27 to 30 of 2023, the appellant has to file appeals invoking the provisions under sub-section (1) of Section 13 of the Commercial Courts Act, as amended by the

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Amendment Act of 2018, before the Commercial Appellate Court designated under Section 3A at the District Judge level, i.e., the Principal District Court, Palakkad.

Registry to return the memorandum of appeal in these Commercial Appeals, which were presented before this Court on 07.12.2023, to the learned counsel for the appellant, so as to enable the appellant to present it before the Commercial Appellate Court at the District Judge level, i.e., the Principal District Court, Palakkad.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

HARISANKAR V. MENON, JUDGE



bkn/-